

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES  
PUBLIC HEARING

**NOTICE** is hereby given that the Nebraska Department of Natural Resources will hold two rulemaking hearings pursuant to Neb. Rev. Stat. § 84-907, the first hearing on the 11th day of August, 2006, at 1:00 p.m., to be held at the offices of the Central Platte Natural Resources District, 215 North Kaufman Avenue, Grand Island, Nebraska, and the second hearing on the 18<sup>th</sup> day of August, 2006, at 1:00 p.m., to be held at the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, in the Lower Level Conference Room F.

The purpose of each of the hearings is to take testimony and evidence about amendment of Title 457, entitled Rules for Surface Water, Chapter 24 regarding Rules Regarding the Determination of Fully Appropriated River Basins pursuant to Neb. Rev. Stat. § 46-713. The subject matter and scope of the rulemaking action is:

Chapter 24 was adopted in August of 2005 as a result of the passage of Neb. Rev. Stat. § 46-713, which required the Department of Natural Resources (the "Department") to specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determination as to whether a river basin, subbasin or reach presently is full appropriated without the initiation of additional uses. These rules also established, pursuant to Neb. Rev. Stat. § 46-748, the criteria the Department would use for making the determination of fully appropriated, and the determination of the geographic area within which surface water and ground water are hydrologically connected. The proposed amendment is driven by changes identified as necessary, and discussed at great length and approved by a subcommittee to the Water Policy Task Force, since the time the rule was originally adopted. The concern was that the Department could, by granting surface water appropriations, be the cause of an area becoming fully appropriated, pursuant to the rule as it is currently worded. That is because the Department does not determine whether the applicant for an appropriation would be able to divert sufficient water to make their operation economical when reviewing and approving applications for appropriations. The rule revisions will address this concern by looking not only at whether the absolute percentages in the rule are met, but if the initial test is not met, adding the additional test to see if the initial test was not met at the time of the application and then looking at whether the water supply that existed at the time of the application is still available. Proposed revisions to the rule also clarify that inability to divert will be based on stream flow data and diversion records, if available for the most junior surface water appropriator, and if such data and records are not available, will be based on the average number of days within each of two time periods that the most junior surface water appropriation for irrigation would have been closed by the Department. Also if such data and records are not available, the proposed amendment states that it will be assumed that if the appropriator was not closed, the appropriator could have diverted at the full permitted diversion rate.

These rules impact all portions of Nebraska that are not presently designated as fully appropriated or overappropriated. They could also impact those portions of the state that are now so designated if a reevaluation of any of those designations is performed pursuant to Section 46-713(2).

Draft or working copies of the proposed amendment to the rules are available on the Department's web site, [www.dnr.ne.gov](http://www.dnr.ne.gov), and are also available for public inspection at the offices of the Secretary of State, Regulations Division, Room 343, State Capitol, Lincoln, NE 68509 and the Department of Natural Resources, 301 Centennial Mall South, Lincoln, NE 68509. There is no expected fiscal impact from the amendment of these regulations on state agencies, political subdivisions, or persons regulated.

All interested persons may attend and testify orally or by written submission at the hearings. Interested persons may also submit written comments prior to either of the hearings which will be made part of the hearing record at the time of hearing if received by the Department of Natural Resources on or before August 11, 2006, for the hearing in Grand Island, or on or before August 18, 2006, for the hearing in Lincoln. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the Administrative Officer at P.O. Box 94676, Lincoln, NE 68509-4676, (402) 471-2363, **by August 9, 2006, for the Grand Island hearing, and by August 16, 2006, for the Lincoln hearing.**